

Exhibit 2

Part 2

1 back some more.

2 And imagine that, Deputy Leo being pushed
3 backwards, backwards, backwards; the defendant pushing,
4 pulling, struggling, trying to get that gun, digging his
5 nails in, causing the deputy pain, as you heard him testify.

6 Deputy Leo, he told you candidly. Evaluate his
7 credibility. Evaluate his demeanor. He looked at you and
8 said yes, he absolutely did defend himself and protect that
9 gun. And, yes, he did headbutt the defendant multiple
10 times. Yes, he did punch the defendant with his one free
11 arm. He only had one free arm. He only had his left arm
12 because his right arm was holding the gun. And he used his
13 left arm.

14 And imagine that restraint. He didn't grab some
15 object as they passed by and hit the defendant with it, beat
16 him with a club, beat him with a stick. He didn't try to
17 use the gun and swing it up into the defendant's chin. He
18 used the one thing he had, the two things he had: his own
19 head and his fist, with this man trying to disarm him of a
20 rifle while they were struggling.

21 And this went on, ladies and gentlemen, and on
22 and on and inched back farther and farther until they banged
23 into the wall. And Deputy Leo told you about that and he
24 said they he didn't know which one hit the wall. He is not
25 sure which way it went. They both ran into the wall. He

1 had sheet rock on him, the defendant may have had sheet rock
2 on him as well, they both went into the wall with such
3 force.

4 You got to see the picture. You got to see the
5 picture of how they hit the wall and the indentation and
6 break that it caused. And you can imagine, imagine the
7 struggle, imagine the defendant's determination, that
8 resulted in him being able to drive a man that is absolutely
9 bigger and taller than he is into that wall.

10 Did the defendant submit at that point? He did
11 not. He continued to go on and on, determined, determined
12 to get his beloved freedom. And what did he do? After
13 bouncing off the wall, Deputy Leo and the defendant began
14 to enter into the front hallway, into the living room area.
15 The defendant continued to pull at the gun, scratching the
16 marshal. You got to see --

17 And, ladies and gentlemen, let me just say right
18 now, perhaps the restraint that was showed by these marshals
19 resulted in the fact that they didn't have any massive
20 injuries. And no one is saying that a scratch on the hand,
21 two scratches, indentations of nails is a major injury. No
22 one is saying that. You haven't heard Deputy Leo say that.
23 You haven't heard anybody else say it. But it is an injury
24 and it was caused in a way that caused a gun to discharge.
25 Because you know and you heard that while Deputy Leo and the

1 defendant were in the hallway, or living room area and the
2 defendant kept pulling on the gun, not submitting, pulling
3 on the gun, scratching and digging his nails in, that his
4 hand slipped and the gun discharged.

5 Now, the gun didn't just discharge into the
6 floor. The gun didn't discharge into the ceiling. The gun
7 discharged such that it went through the front door and on
8 to the concrete outside, fragmenting. It went through the
9 front door, in the front hallway, and outside. You got to
10 see pictures of the entry and the exit. You will get to
11 seem them again, should you wish, during your deliberations.

12 And imagine, ladies and gentlemen, the restraint
13 that was showed by Deputy Leo in being able to control that
14 gun such, so much so that it only went into the ground as
15 opposed to somewhere else on this residential street.

16 Did the defendant submit then, ladies and
17 gentlemen? He did not. Because after, even after the shot
18 was fired, thus alerting Deputy Denney and David in the back
19 to come and help their colleague, the defendant continued to
20 struggle. And it took five officers to get him to finally
21 submit.

22 It took Marshal Thomas, who testified to you
23 that he, at one point, grabbed the defendant around -- he
24 went low. He called it going low -- went low and grabbed
25 around his lower section. At one point, tried to pin him

1 with an elbow. Another point, was standing on his legs.

2 Imagine that, ladies and gentlemen.

3 Now, Marshal Thomas isn't a small guy either.

4 Imagine having him on your legs. Would that make you stop
5 twisting and turning? Imagine having Marshal Thomas on your
6 legs, having Deputy Denney try to get your left arm, having
7 Deputy Leo trying to get your right arm and having, --
8 sorry -- Deputy David having your left arm, Deputy Leo with
9 the right arm and Deputy Denney going out to get leg chains.

10 Might you stop struggling then? Did the
11 defendant submit? He did not. Because it took five of them
12 to finally pull his arms out from under him. And imagine
13 what they must have been thinking. Does this guy have a
14 gun? Does he have another weapon? Has he been able to grab
15 something? Has he been able to grab some of the sheet rock
16 that broke? What is he holding under there? Why won't he
17 give them his arms?

18 Well, why wouldn't he give them his arms is
19 because he loves freedom. Even to the bitter end he fought.
20 And it wasn't until they put him in handcuffs behind his
21 back, in leg irons, and a waist-chain. Imagine how chained
22 up this man was, that he finally stopped. Finally.

23 Ladies and gentlemen, we know that once the
24 marshals were able to do what they came there to do at 2:30
25 in the afternoon, the defendant's jig was finally up. And

1 he admitted that the jig was up.

2 And he did confess, ladies and gentlemen, as I
3 said the evidence will show when I said this in my opening
4 statement. Because we know he went to the hospital. We
5 know he went to the hospital because he was injured. He had
6 injuries. You saw the picture. He absolutely had injuries
7 to his face inflicted by Deputy Leo when the defendant was
8 trying to disarm him. And they went to the hospital. And
9 in the room with the defendant was Deputy David. And the
10 defendant started talking.

11 And remember Deputy David said, when I asked for
12 him to describe the defendant's demeanor, as nonchalant.
13 Nonchalant. Imagine that, nonchalant. Why might that have
14 been? Might that have been the demeanor of a person who is
15 finally resigned to what has happened? I mean he fought.
16 He fought and fought and fought and fought. I mean he took
17 on the law, as the song said, and he lost and now he was
18 resigned to the fact that he was finally in custody again
19 after a decade. And he was nonchalant.

20 And what did he say? He said "I was on the run
21 10 years." "I had to give it a shot." "I had to give it a
22 shot."

23 Now, Mr. Peruto may say, well, that is not a
24 confession. Well, ladies and gentlemen, if that's not a
25 confession, well, then what is it? "I had to give it a

1 shot." Give what a shot? What is it that he did for which
2 he apologized for -- you heard that testimony -- and then
3 said "I had to give it a shot." "After all, I've been on
4 the run for 10 years."

5 The "it," ladies and gentlemen, was the fact he
6 tried to escape, as Deputy David testified. And he didn't
7 just flee. He tried to escape by forcibly resisting arrest
8 and forcibly assaulting Deputy Leo. That is the "it,"
9 ladies and gentlemen.

10 And when the jig was up, the defendant, the
11 nonchalant fugitive no longer, said and acknowledged that he
12 had to give it a shot. But oh, well, it's destiny. He said
13 that, lucky for them, they got there just then because he
14 was about to get in the shower and go in New York and once
15 he heard they were at his house, he would never come back.

16 That is how determined he was. He told them he
17 would never come back. How lucky they were. He wondered
18 how they found them. This is a man who loved life. This is
19 a man who loved freedom. But his freedom was taken away and
20 he recognized that and he admitted what he had done.

21 Ladies and gentlemen, the evidence has proven
22 the defendant did in fact forceable assault Deputy U.S.
23 Marshal Jack Leo. He ran into him. He charged him. He dug
24 his nails into Deputy Leo's hands. He caused Deputy Leo
25 pain. He caused the two of them to go slamming into a wall.

1 He continued to struggle on the ground, to flail.

2 You heard the testimony of Marshal Thomas that
3 as the defendant was flailing, his arms were hitting the
4 various people, including Deputy Leo, who were holding him.
5 The evidence, ladies and gentlemen, has proven the defendant
6 forceable assaulted Deputy Leo.

7 The last element with regard to Deputy Leo's
8 count, and that is Count I of the indictment, is that --
9 and Judge Jordan I anticipate will instruct you -- that the
10 defendant inflicted bodily injury to Deputy Leo. Now, Judge
11 Jordan is going to tell you what that means, what "bodily
12 injury" means.

13 I anticipate he is going to tell you that to
14 inflict "bodily injury" means any injury, including a cut,
15 an abrasion, or a bruise. Any physical pain. An injury
16 includes any physical pain, or any other injury to the body,
17 no matter how temporary.

18 Well, ladies and gentlemen, as to that fifth
19 element, the evidence has proven just that. You got to see
20 the pictures of Deputy Leo's hands where the defendant dug
21 in his nail, any cut, any abrasion, any bruise, any physical
22 pain. You know he experienced pain, as you very well might
23 experience pain, when the defendant, himself in a frenzy, is
24 digging his nails into your hand to try to disarm you.

25 The evidence has proven the defendant in fact

1 forcibly assaulted Deputy U.S. Marshal Jack Leo, inflicting
2 bodily injury, Count I of the Indictment, and therefore is
3 guilty of that count.

4 In the same manner, ladies and gentlemen, the
5 evidence has proven that the defendant forceable assaulted
6 or resisted or impeded Deputies U.S. Marshal Denney and
7 David.

8 Now, we know assault. And, resist or impede.
9 Resist, I anticipate Judge Jordan will tell you, means to
10 obstruct or oppose. To interfere, I anticipate Judge Jordan
11 will tell you, means to obstruct or hinder.

12 Ladies and gentlemen, can there be any doubt
13 in your mind that the defendant in fact forcibly resisted
14 Deputies U.S. Marshal Denney and David? Running throughout
15 the house. He first unleashed pit bulls on them -- excuse
16 me -- on Deputy David. He ran throughout the house. When
17 Deputy Denney tried to subdue him, the defendant twisted and
18 turned.

19 Resist, obstruct or oppose? Of course he was
20 obstructing, of course he was opposing, of course he was
21 hindering. He didn't want to be taken into custody. And he
22 did so by moving his body, by doing so in a physical,
23 forcible way.

24 When Deputy David tried to assist in finally
25 subduing the defendant, Deputy David tried to grab his arm,

1 the defendant again, flailing his legs, wouldn't allow the
2 deputy initially to grab his arm, again using his body,
3 using force, using physicality to obstruct, to hinder, to
4 oppose, to resist arrest.

5 So, ladies and gentlemen, that element of the
6 crime with regard to Counts II and III, Deputies U.S.
7 Marshal Denney and David has been proven by the evidence.

8 The last element with respect to Deputies Denney
9 and David is that in resisting or interfering or opposing
10 the deputies, the defendant used a dangerous weapon. And I
11 anticipate Judge Jordan will describe for you or define for
12 you what a dangerous weapon is. I anticipate he will define
13 a dangerous weapon as follows:

14 A dangerous weapon means anything, anything
15 capable of inflicting serious bodily injury or causing
16 someone's death.

17 And when you are considered whether something is
18 a dangerous weapon, I anticipate Judge Jordan will instruct
19 you that both the physical capabilities of the thing, the
20 item as well as the manner in which it was used should be
21 considered.

22 Ladies and gentlemen, what is more dangerous
23 than a pit bull who is in a frenzy? What is more dangerous
24 than a snarling, snapping dog? Any dog; Lassie. Any dog
25 who is worked into a frenzy, snarling, bearing its teeth,

1 lunging, biting and snapping. It's an inherent quality, the
2 dog, whether it be Lassie or the two ferocious pit bulls the
3 defendant had, inherently dangerous. But it's not just
4 inherently dangerous.

5 Think about how the dogs were used by the
6 defendant. Think about it. What did he do after the light
7 bulb went off? He pushed the door open so they could
8 escape. And why did he do that, ladies and gentlemen?
9 Because he knew the dogs were already worked up. They got
10 more and more and more worked up but maybe they were already
11 worked up. They're under his control. They're not lunging
12 at him, they're lunging at the door. And he threw that --
13 pushed that door open so that they could escape, so that
14 they could attack the officers.

15 There is no other reason in the world. His
16 actions show the defendant himself recognized they were
17 dangerous and tried to use them. He pushed the door open.
18 And, ladies and gentlemen, he didn't say "sic," he didn't
19 say "get them." He didn't have to. He pushed the door open
20 and fled, hoping they would be released. And, in fact, they
21 almost were. That is how those dogs were released.

22 And then, having been "sicked," if that is the
23 word, ladies and gentlemen, maybe not, on the deputies in
24 the front, the dogs continued that pattern throughout the
25 house. And we know that eventually they cornered both of

1 the Deputies U.S. Marshal Denney and Doug in respective
2 bedrooms and put them in a situation where they were in a
3 standoff.

4 Ladies and gentlemen, the evidence has proven
5 the defendant did exactly what he is charged with, exactly
6 what he thought of when the light bulb went out. He used
7 the only really dangerous weapon at his disposal, the ones
8 that might very well facilitate his escape, the ones which
9 in fact did facilitate his attempts at escaping: Those two
10 pit bulls which later tore each other apart.

11 Do you have any doubt, ladies and gentlemen,
12 about the state those dogs were in, the docile dogs to which
13 the defendant refers, the pets to which he testified?
14 Consider what they did to each other. Consider the
15 photograph that you saw of the back bedroom where they were
16 put after cornering the deputies, after snarling and almost
17 attacking the deputies, after lunging at the deputies. They
18 turned on each other and they tore each other to bits.

19 You got to see the blood all over the floor, all
20 over the mattress. You will get to see it again, should you
21 so choose. You got to see pictures of these docile dogs
22 with blood on their backs, blood n their hind quarters. You
23 got to see a picture. If you didn't see it on the
24 projector, you will get to see it when you get the hard
25 copy: Pieces of ear bitten off, flesh and skin torn because

1 that was the type of dog, were the type of dogs they were,
2 and that was the state they were in, the defendant put
3 them in by unleashing them on these officers. That is a
4 dangerous weapon, ladies and gentlemen. And the evidence
5 has proven that.

6 And, finally, ladies and gentlemen, with respect
7 to Marshal Thomas, there are only four elements. There is
8 no need to find that he was injured. There is no need to
9 find there was any dangerous weapon used. You need only
10 find that he was acting within the scope of his federal
11 employment and that the defendant forceable assaulted or
12 resisted or impeded or obstructed him and did so
13 intentionally. And the evidence has in fact, for the
14 reasons we discussed, done that.

15 Now, ladies and gentlemen, before I leave you,
16 and I give my colleague Mr. Peruto an opportunity to stand
17 before you, we really do have to talk about the defendant's
18 testimony. But we have to talk about the defendant's
19 testimony, ladies and gentlemen, because sometimes you might
20 have a case where you can reconcile certain things you hear
21 from one witness you hear from another witness. The stories
22 aren't exactly consistent but they're not mutually
23 exclusive.

24 Well, that is not this case. That's not this
25 case. It's not this case because what the defendant

1 testified and what the four federal marshals testified to
2 is mutually exclusive. So let's talk about what the
3 defendant said.

4 The defendant testified that he immediately
5 fled to the back upon seeing the marshals. And by the way,
6 ladies and gentlemen, he doesn't dispute that he knew that
7 they were law enforcement officers. He knew it. That's why
8 he ran. According to him, though, he ran immediately. He
9 didn't unleash the pit bulls in the front, not like the
10 sworn testimony of Deputies Leo and David. He didn't let
11 loose those pit bulls. Instead, he ran to the back, saw he
12 was cornered, came back and then it was then that the
13 animal, the animal, Deputy Jack Leo approached and tackled
14 him. The animal.

15 Now, you got to see Deputy Leo testify yesterday
16 and you got to see him testify again today. You judge for
17 yourself. Judge for yourself the demeanor. You judge for
18 yourself whether his demeanor is consistent with the animal
19 the defendant said he was.

20 You heard the defendant say that Deputy Leo
21 tackled him, and didn't just tackle him, but then, in a very
22 personal way or in a way that appeared personal to the
23 defendant, began to beat him, punch him, punch a man while
24 he is down, punch him, punch him, punch him in the face,
25 inflicting injuries to his face.

1 But then that is not enough, not enough for the
2 animal. Because then Deputy Leo picked him up and threw him
3 into the wall, causing, causing -- and I think the word the
4 defendant used was "flung" -- flung him into the wall,
5 causing the dent, excuse me, causing the break that you see
6 in Defense Exhibit 3. And then the animal was not satisfied
7 with that. He had the defendant on the ground and was still
8 hitting him, hitting him until his colleagues, Marshal
9 Thomas and Deputy Denney had to pull him off.

10 Now, think about that, ladies and gentlemen.
11 Think about a couple things. How about that blood on the
12 wall? Do you see any? Because, after all, according to
13 the defendant, the hole in the wall happened after he had
14 already been beaten or started to be beaten by Marshal --
15 excuse me -- by Deputy Leo, the animal, after the animal
16 tackled him, and had him down on the ground and was hitting,
17 hitting and hitting and hitting and then he flung him -- not
18 threw, not pushed, not hastened, but flung him into a wall?

19 How did that blood splatter Mr. Peruto was
20 talking about? Might there be blood spatter on the wall
21 after a defendant who was beaten savagely on the floor was
22 flung into it? Ask yourself if you saw any, because the
23 defendant didn't. You see how hard he was looking. What
24 might have been going through his mind when he was asked
25 that question?

1 How about Marshal Thomas? Did you find it
2 interesting what the defendant said about Marshal Thomas?
3 Marshal Thomas was his friend. Marshal Thomas did not hurt
4 him, he tried to help him. He didn't stand on his legs. He
5 tried to help him.

6 Ladies and gentlemen, you heard Marshal Thomas
7 testify yesterday. Did you hear him say anything about
8 trying to help the defendant? Or did you hear him testify
9 about how, when he ran in after, after Deputy Denney, he
10 saw Deputy Denney and others engaged in a struggle with
11 the defendant, because the defendant was struggling.
12 Eventually, the defendant charged up the hall. And he has
13 to aid Deputy Leo. Aid Deputy Leo. That is what Marshal
14 Thomas told you.

15 How does that reconcile, ladies and gentlemen?
16 The man who was to help the defendant testified to you that
17 he had to help hold the defendant down, after going low,
18 grabbing him and trying to help take him to the ground.
19 Think about that, ladies and gentlemen.

20 The defendant said, testified he didn't see a
21 gun. He didn't see a gun. He didn't know anything about a
22 gun. Gun? No gun here. No gun.

23 He also testified that he was in this front
24 area, the living room area. That is one thing, ladies and
25 gentlemen, that is corroborated by everybody else. That the

1 defendant and Deputy Leo were in the living room area when
2 the shot rang out. The defendant said that, too. He heard
3 the shot while he was in the living room area with Deputy
4 Leo. And we know actually that is true because that is when
5 he discharged the gun.

6 But the defendant said that at the time that he
7 was in this area, being beaten by the animal and heard the
8 gunshot, there were no dogs there. In fact, he testified he
9 heard a gunshot -- never saw a gun, heard a gunshot and then
10 heard a yelp. And that made him think his dogs or dog had
11 been shot. But, ladies and gentlemen, if there are no dogs
12 in this area where the defendant is when the gunshot rings
13 out, how is it that the gunshot went out the front door?
14 I don't understand if, in that area, no dogs. You know
15 the gunshot went out the front door because you saw the
16 pictures. How is that, ladies and gentlemen? How did
17 that work? Think about that when you are evaluating the
18 defendant's testimony.

19 Ladies and gentlemen, again my name is April
20 Byrd. I'm an Assistant U.S. attorney for the District of
21 Delaware. At the table, I didn't introduce before, this is
22 Barbara Lotharp, who is a paralegal specialist at our
23 office, who we are very happy to have. And Deputy U. S.
24 Marshal William David. He is the case agent in this case.
25 It's our privilege to represent the United States of America

1 in this matter.

2 The evidence in this case, ladies and gentlemen,
3 the testimony of the witnesses, the physical evidence that
4 you have gotten to see and will get to see again, has proven
5 one thing. It has proven, ladies and gentlemen, that on
6 April 9th of 2005, the decade-long flight of a fugitive from
7 justice came to an end, but it didn't come to an end without
8 cost. It came to an end at the cost of an assault and the
9 forcible resistance of four federal law enforcement officers
10 by a man who refused to go down. He refused to go down and
11 he is guilty of the crimes for which he is charged. And
12 that man, ladies and gentlemen, is the defendant Nelson
13 Lora-Pena, and the evidence has in fact proved him guilty as
14 charged. I thank you very much for your time.

15 THE COURT: Mr. Peruto.

16 MR. PERUTO: I would like to say this with a
17 straight face but "I am the greatest" and "I am pretty,
18 too."

19 Now, my buddy, my buddy Greg back there, is
20 saying "now Chuck has totally lost his mind." And he went
21 in front of a jury and he said he is the greatest, that he
22 is pretty. And I am kind of crazy. This is how I act
23 outside the courtroom. But I'm not crazy and I haven't lost
24 my mind. I might be pretty.

25 Ladies and gentlemen, have you ever heard that

1 before? "I am the greatest and I'm pretty too?" Muhammad
2 Ali, after every fight, nothing over here. Nothing over
3 here. Nobody ever photographed his hands after a fight.
4 When Howard Cosell was interviewing him back in the day, he
5 was pretty. He was in a fight. He was in several fights.

6 Now, the defendant is charged with assault. He
7 is charged with assault. He is not charged with losing a
8 fight.

9 The Government just wrapped up its summation by
10 telling you this arrest came at a cost, at a cost, because
11 these marshals were assaultive. So we'll make a federal
12 case out of it. Not a state court case for resisting
13 arrest, a federal case for assaulting marshals.

14 And you have the Government's pictures that
15 the Government people took at the scene or subsequently
16 thereto of the injuries to these marshals. This cost to the
17 Government. A lot of injuries. I would suggest to you
18 Muhammad Ali suffered more injuries. There was no cost to
19 the Government.

20 The Government tells you, doesn't the evidence
21 prove this or hasn't the evidence proven that? Ladies and
22 gentlemen, this is not an automobile accident case where the
23 burden of proof is more likely than not. We're not closing
24 down a factory to put people out of work, where the burden
25 is clear and convincing. This is a criminal case, where the

1 burden is beyond a reasonable doubt, the highest burden in
2 this land. The judge will define for you what a reasonable
3 doubt is. And he will tell you that it's proof so positive
4 that you don't hesitate. Simple.

5 My job is to show you the different things that
6 you should look at in this case in the deliberation room
7 with each other. That should make you hesitate at the
8 least.

9 I asked Marshal Leo: "You file a report in this
10 case?" "Yes." "And it's your duty to do so when involved
11 in an incident?" "Yes." "And you file your report and it
12 stays with the case file and you could use it to refresh
13 your recollection when the time comes for trial?" "Yes."

14 Well, I intentionally didn't ask the other
15 marshals if that is your duty because they didn't file
16 reports. So you know what their answer is going to be.
17 Their answer is no. It's going to be no. Logic. You
18 didn't strap the juror button on and become stupid. There
19 is no magnetic field to it. They're going to say we don't
20 have to file one. And the marshal who is involved in this
21 very case will certainly back them up. "Oh, I don't require
22 that anymore."

23 Common sense. Common sense. You are an
24 eyewitness to a crime, you file a report. Don't take my
25 word for it, it's in evidence. Detective Leo told you.

1 "Yes." That is your requirement.

2 Now, why is it that when we have local
3 authorities, state authorities and federal marshals involved
4 in this takedown that we only call the federal marshals?
5 Why is it that we just call the home team and don't rely on
6 any discrepancies coming from the State Police or the local
7 police? Is it my burden of proof, all of a sudden, that the
8 burden of proof just shifts to the defendant?

9 You have Marshal Leo's word that there was a
10 strike mark outside on that concrete. One of the biggest
11 pieces of physical evidence in this case that you don't
12 have. You mean to tell me, you dummies, that you can bend
13 down, take out a dollar, photograph it on the door, and just
14 overlook, don't bother with, forget to photograph the strike
15 mark of a projectile on concrete? Or was there none? Or
16 was there none? Or was it because the person who shot fired
17 the gun in a laying position?

18 These ferocious pit bulls -- not dogs because,
19 let's face it, the Government has earned the right to call
20 them ferocious pit bulls because they presented evidence
21 from the marshals of the drastic damage they did to them.
22 They proved beyond all doubt that these dogs were able to
23 bark. They proved it. They proved to you that because
24 they're pit bulls and some of the jurors may have heard of
25 pit bulls that you're automatically expert on what a pit

1 bull is and, therefore, they don't have to call anybody from
2 K-9 on how they were acting. They don't have to call these
3 police dog people who put them into this vehicle. It
4 relieves them of that burden because, guess what? It's a
5 pit bull. Proof beyond a reasonable doubt.

6 The Government took great pains to define for
7 you what the word "bodily injury" is. It doesn't have to
8 be life threatening. They didn't tell you what "serious
9 bodily injury" is. And why is it important that you know
10 that? Because in the definition of "deadly weapon," which
11 this defendant has used, is accused of in some of these
12 counts, it has to be an instrument commonly used to cause
13 substantial risk of death or death itself. Because the
14 Government alleges that these are pit bulls. That's proof
15 beyond a reasonable doubt that they were capable of
16 implementing serious bodily injury.

17 Listen to the judge's definition of "serious
18 bodily injury" and determine for yourself whether getting
19 bitten by a dog meets that requirement. Is that the loss of
20 a limb? The permanent disfigurement as required by law? Or
21 death?

22 I know one thing. I don't hate Marshal Leo. If
23 I'm going into a room to kick some ass, I don't want these
24 pit bulls, I want Marshal Leo with me.

25 Now, does the Government have evidence, when he

1 was on the run and tracking this man down where he is, that
2 he took boxing lessons? Socializing or for whatever
3 reasons? Sure. The Government is powerful. This is the
4 United States of America. They knew where he had been and
5 they tracked him down. You don't get a badge, Marshal Leo,
6 by having this information and coming in and giving him this
7 country ass kicking. You don't get a badge for that.

8 THE COURT: Mr. Peruto, refrain from the
9 profanity, please.

10 MR. PERUTO: Oh. The Government knows about
11 this individual. We don't know anything else he has been
12 doing for the last ten years except traveling. Is he
13 training pit bulls to attack somebody?

14 Where is the photographer? Who took these
15 pictures and where is this photographer? What was taken?
16 What wasn't taken? Or would I be able to cross-examine him?
17 And why wasn't this taken? Why wasn't that taken?

18 Now, I cross-examined Marshal Leo. What does
19 the term "readied" mean? Because he knows, he read his
20 report before he took the stand. Oh, ready could mean two
21 things. It could mean that I got my gun at the store and
22 it's ready to be picked up in case I need to use it in a
23 couple of weeks, or it could mean that the gun is loaded and
24 ready.

25 He can get away with that with the jury because

1 you're idiots. Look in the mirror during deliberations, if
2 you have to go to the bathroom, and look in there and say
3 "you idiot," because that is what you are.

4 How come, in covering himself, by saying
5 there is two definitions of readiness, he is that hip on
6 cross-examination with the word "subsequently?"

7 Subsequently. I subsequently readied my gun.

8 The defendant is charged with assaulting federal
9 officers. He is also charged with assaulting federal
10 officers with a deadly weapon. Is he charged with putting
11 his hands up so he wouldn't be beaten anymore, or protecting
12 himself? No.

13 What federal officer did he assault? What
14 federal officer did he assault? I asked the questions of
15 the other officers. Did he swing at him? Did he assault
16 anybody else? Did you see him inflict any injury to anybody
17 else or swing at anybody or assault anybody? No. That is
18 what he is charged with.

19 On top of that, if that is not serious enough,
20 he is accused of using a deadly weapon. The only evidence
21 in this case, the only evidence in this case that the
22 Government has proffered from the witness stand is that he
23 opened the door a little bit.

24 Well, then why is it this most crucial part of
25 using a deadly weapon, that he opened door a little bit, not

1 contained in anybody's report? Why is it that nobody even
2 wrote a report? Is that because it's Marshal Leo's problem?
3 It's Marshal Leo's case?

4 The defendant doesn't have to testify. You know
5 that. The judge is going to instruct you to that. But he
6 took the stand. Did it make sense to you? Did he just come
7 in here, such a genius that he is, you saw him on the stand.
8 Is he a professional witness? Is he a marshal that comes in
9 and testifies day in and day out on cases? Or is this new
10 to him?

11 Why would he say, of all the people he could
12 say, that they had to pull Marshal Leo off of him? That in
13 his frame of mind that they were trying to help him? Why
14 would he say that? Why would he say? What is his purpose?
15 What is his conscious object? That he didn't see and that
16 Agent Leo, well, or Marshal Leo did not have a rifle around
17 his body? Is he just making that up or is that what is in
18 fact logical? That he didn't have it around him?

19 The Government has the burden of proof. Let
20 the Government show you how Marshal Leo's version that this
21 rifle was around him during this altercation. And as big as
22 he is, Marshal Leo, this defendant was able to not only get
23 his hands around the gun, not protect his face, not use his
24 hands to cover up but get his hands around the gun, take the
25 safety off and fire it. Show us, demonstrate for us how

1 that is possible, let alone likely, let alone clear and
2 convincing, let alone beyond a reasonable doubt.

3 We have pictures of the room where the dogs were
4 put. I take it we're going say that the dogs went in the
5 drawers and took everything out of the drawers and dumped it
6 on the bed. That is how that stuff got there?

7 What we do have in Marshal Leo's report is that
8 the defendant, and this is the word used, your recollection
9 counts, "dug" his fingernails into my hands. You saw those
10 hands. You saw those hands. Reasonable doubt. Proof so
11 convincing you would not hesitate to rely and act on it.

12 Now, the Government, in its definition of these
13 terms or the elements of the crimes, was accurate in the
14 words they used but they sort of jumped over the words they
15 don't want you to dwell on and land on words you know they
16 want you to dwell on.

17 Well, an assault can't occur by accident. An
18 assault can't occur by protecting yourself. An assault has
19 to be intentional. You don't commit a crime by accident.
20 It has to be the defendant's conscious object to assault
21 these federal marshals. It doesn't -- it cannot be his
22 conscious object to run out the door or to flee. It has
23 to be his conscious object to assault him with force.
24 Intentionally, with force. And the marshal has to be acting
25 in his official duty.

1 When you're laying there and you're pounding
2 somebody's face in and you're pounding him and you're
3 pounding him, I don't care what you are wearing that says
4 "police." You're not acting in your official duty. That is
5 not what you are sworn to do. Whether this guy is a boxer
6 or an actor or a soprano, that is not what your official
7 duty is.

8 I hope you picked up on the way the prosecutor
9 just summed up her case when she said "and the defendant
10 did confess." The defendant did confess. You heard the
11 defendant when he was in the hospital room, while the
12 marshal was in the room, saying certain things. She didn't
13 say that the defendant was talking to that marshal.

14 Now, the defendant didn't blame the whole world
15 for this altercation. He said two guys, the two guys at the
16 front door. And one of the guys at the front door wants to
17 interpret what he said at the hospital his way. "You know I
18 had to take a shot at it." "It?" It is not a face. It's
19 not your body. Or is it referring to "I had to take a shot
20 at it" and run? You interpret it the way you want to
21 interpret it.

22 Couldn't we bring anybody in from ballistics to
23 show the trajectory or the fire line of that bullet? How
24 could he get a safety off? Do you have any evidence of
25 that? How was he able to fire? Any evidence of that?

1 Ladies and gentlemen, I am using my notes to
2 refresh my recollection because I can't remember everything
3 that is said. I'm not pretty and I'm not a genius. I'd ask
4 you to be my lawyer in the deliberation room and remind
5 each other what it is I forgot that struck you as important,
6 because I can't possibly cover everything.

7 And use your common sense. Figure out at what
8 point Marshal Leo had this rifle. They go to the front
9 door. They see the defendant right there. They give him
10 orders. And the defendant acknowledges that, that he gave
11 him orders. The defendant acknowledges he sees their vests.

12 The defendant takes off into another room, by
13 everybody's account. And by everybody's account, you
14 can't see the backdoor from the front door. These trained
15 marshals don't know if he is going for a weapon. So they
16 allow him to run further in to a house so that he could
17 barricade himself, so he could retrieve a weapon or do
18 something else that could bring them harm when they have a
19 clear path to get him right then and there? You don't think
20 they're going to do what they did later on and just kick the
21 dogs out of the way, if they don't want to fire at them?

22 And if these dogs are so ferocious and they're
23 so worried about it, how did the marshals come in from the
24 backdoor? How did they come in from the backdoor? Did
25 anybody have these dogs restrained or put in a room at that

1 time?

2 And if Deputy David wants to have his cake, then
3 force him to eat it. Force him to eat it. Because if he
4 wants you to believe everything that the defendant did at
5 the hospital, then believe everything.

6 Acting nonchalantly, as the prosecutor called
7 it, in a cool, calm manner. "You know I had to give it a
8 shot." Are they words of a violent man? Are they words
9 that of somebody that hates all marshals? Are they words of
10 somebody who has it in for law enforcement? Or are they
11 somebody who is under arrest and he is talking freely, like
12 a gentleman?

13 It's assumptions vs. proof beyond a reasonable
14 doubt, especially with these dogs and the allegation that
15 they're deadly weapons. If the dogs, in this melee of
16 everything happening to their owner, fought in that room and
17 hurt each other, that's his fault? That's his fault? We're
18 going to hold the defendant responsible for assaulting with
19 a deadly weapon? That's his fault? That is proof beyond a
20 reasonable doubt?

21 The prosecutor makes a big thing out of the fact
22 that the defendant didn't get blood on the wall when he was
23 first thrown into it. Well, there is a couple things you
24 could say to yourself. Common sense.

25 One. To get blood on the wall, you have to

1 first be bleeding. You have to first be bleeding. I think
2 that is step one. Does he know that he is bleeding yet?
3 Did he testify I'm already bleeding? He is already busted
4 up? Was his face already pushed into the wall so the blood
5 would stay on the wall? Or was his back thrown into the
6 wall and that is why there is no blood on it? And was his
7 back thrown into the wall and one of the first things that
8 already occurred and he is not bleeding yet?

9 One thing we know for sure. One thing we know
10 for sure, which is in evidence at Government's Exhibit 10,
11 we know he is bleeding there. And we can see the blood
12 behind his head there. And we know the blood that is behind
13 his head.

14 THE COURT: Mr. Peruto, I need to have you stand
15 back, sir. I can't have you that close to the box.

16 MR. PERUTO: We know that the blood behind his
17 head is his. And we know the busted up mouth and the eyes
18 and blood, and everybody standing around him, that is the
19 defendant. It's in evidence.

20 This case has come at tremendous cost. You
21 can't just bust somebody up and do nothing about it. There
22 has got to be a prosecution. There has got to be. There
23 has got to be.

24 Use your common sense. Is the marshal pleased
25 at the way his deputies acted that day? That is for you to

1 determine. Is he going to come in and sell them out? That
2 is another story. However, were there other eyewitnesses
3 there from other agencies that don't have to answer to that
4 marshal, that aren't part of this group? Yes, there were.
5 You didn't hear from them. It's not my burden of proof.
6 It's the Government's burden of proof.

7 And just ask yourself why is it that we don't
8 have a single witness from outside the group to testify that
9 it was this defendant's conscious object, his intent to
10 assault federal marshals, not to just run? And why is it
11 that we don't have independent witnesses to testify that his
12 conscious object was to not only assault them but assault
13 them with a deadly weapon?

14 Thank you.

15 THE COURT: Ms. Byrd, your rebuttal.

16 MS. BYRD: The United States Marshal for the
17 District of Delaware, David Thomas, is a liar. If you
18 believe that, ladies and gentlemen, then you must acquit.
19 You must acquit Nelson Lora-Pena, the defendant.

20 Marshal Thomas is not just a liar, he is also a
21 criminal. He is a criminal because he took an oath to swear
22 to tell the truth subject to the penalty of perjury, and he
23 got up there and he told you the defendant resisted arrest.
24 He forcibly resisted arrest. He described to you the
25 defendant's actions.

1 But, ladies and gentlemen, if he is not just a
2 liar but also a criminal, and you believe that, then you
3 must acquit the defendant.

4 Supervisory Deputy U.S. Marshal, Robert Denney,
5 is a liar. He too is a criminal, a perjurer. If you
6 believe that, ladies and gentlemen, then you must acquit the
7 defendant, because that is your duty.

8 Deputy United States Marshal Jack Leo is a liar.
9 He is a liar and a criminal -- a criminal who lied to you
10 under oath. If you believe that, it is your duty, your duty
11 to acquit the defendant.

12 Deputy United States Marshal William David is a
13 liar and a criminal, like his counterparts, because he too
14 testified under penalty of perjury to tell you the truth.
15 He too described to you the defendant's actions, his
16 resistance, his assaults, his profanity, his determination.
17 And if that too was a lie, then, ladies and gentlemen, it is
18 indeed your duty to acquit the defendant.

19 Is it logical? Mr. Peruto asked you is it
20 logical? Was the defendant's testimony logical? Well,
21 ladies and gentlemen, let's think about what is logical. Is
22 it logical? Does it make sense to you that four United
23 States Marshals, three deputies and the U.S. Marshal
24 himself, who had never laid eyes on the defendant before,
25 for whom they regarded the defendant as just another

1 fugitive, is it logical that they would come into court
2 and lie and perjure themselves?

3 Is it logical for Deputy U.S. Marshal Jack Leo,
4 who never laid eyes on the defendant before, to bear a
5 grudge against him so terrible that it turned him into an
6 animal, beating and beating and beating this poor helpless
7 fugitive who was on the ground, throwing him into the wall?
8 This man he had never seen before in his life. Turning U.S.
9 Deputy Marshal Jack Leo into this animal, this crazed being
10 such that his colleagues had to pull him off? Does that
11 make any sense?

12 Does it make any sense that the bullet went
13 through the front door if in fact the marshals were shooting
14 at dogs that weren't in the room? By the defendant's own
15 testimony, what did the bullet do? Travel from the back
16 hallway through the bedroom wall, out through the hallway
17 wall, then through the wall? Is it the most miraculous
18 bullet that ever existed? Does that make any sense?

19 And although my colleague Mr. Peruto is indeed
20 eloquent, ladies and gentlemen, does it make any sense that
21 after this, after being beaten by Deputy Leo -- and it's
22 your recollection that counts, but did not the defendant,
23 when asked, say that he was tackled by Deputy Leo, he
24 was beaten on the floor, then he was flung, using the
25 defendant's words, into the wall causing this concave. Then

1 he was put back on the floor and beaten some more. Had some
2 injuries. He was injured during the time before and after.
3 Does it make any sense? Does it make any sense that there
4 is nothing, not a smear, not a drop. Forget the smear.
5 That might note a lot of blood. How about a drop? A drop
6 of blood on the wall into which he was flung, whether it was
7 front, forwards, backwards? What about this splatter? Does
8 that make any sense, ladies and gentlemen?

9 Ladies and gentlemen, Mr. Peruto talked about
10 serious bodily injury. And again, what Judge Jordan tells
11 you is the law and that controls, but I anticipate he is
12 going to read from page 21 of the jury instructions which
13 you will receive and he will define dangerous weapon in the
14 following way:

15 The last element the Government must prove
16 beyond a reasonable doubt as to counts two and three -- and
17 that would be counts that involve Deputies U.S. Marshal
18 Denney and David -- is that the defendant used a dangerous
19 weapon to assault, resist or interfere with those deputies.
20 The term "dangerous weapon" means anything capable of
21 inflicting serious bodily injury or causing the death of a
22 person.

23 Now, didn't you hear Mr. Peruto say that that
24 means commonly used to cause a substantial risk of death or
25 death itself? Ask yourself if you heard that when Judge

1 Jordan reads the instructions to you or when you see them
2 for yourselves.

3 Judge Jordan I anticipate will further instruct
4 you as I stated before that both "the physical capabilities
5 of the thing used and manner in which it is used may be
6 considered in determining whether the thing is a dangerous
7 weapon."

8 Well, ladies and gentlemen, if you were to
9 find, as is your right, that a snarling, crazed, growling,
10 barking, lunging, frenzied pit bull is not capable of
11 inflicting serious bodily injury; if you were to find that
12 a snarling, growling, lunging, frenzied pit bull who was
13 baring its teeth, running after various officers, cornering
14 them in standoffs, was not used by the defendant when he
15 pushed open the door, to facilitate his escape, to resist
16 arrest because the defendant himself recognized that they
17 were dangerous weapons; then Mr. Peruto is right, you have
18 to acquit on counts two and three of the Indictment. But
19 ladies and gentlemen. When you are considering that, use
20 your common sense.

21 The defendant himself recognized the physical
22 capabilities of the thing used. The thing being his dogs.
23 He recognized the opportunity to escape because they weren't
24 Lassie, because they weren't Chihuahuas, because they
25 weren't cats, because they weren't docile, because they were

1 frenzied, and he recognized that and he seized upon the
2 opportunity. And he didn't just push the door open, he
3 pushed the door open and he simultaneously pivoted and ran
4 to the back. And he did that, ladies and gentlemen, because
5 he knew those dogs, which were in a crazed state, would
6 attack and they tried to attack. And when they were foiled
7 the first time around, they continued to try to attack until
8 they finally attacked themselves.

9 Mr. Peruto said many times during his closing
10 that this is assault on a federal officer, assault on a
11 federal officer, assault on a federal officer. And, indeed,
12 the crime is called forcible assault on a federal officer, I
13 anticipate Judge Jordan will say to you, but as I discussed
14 during my closing, there are four different counts for the
15 four different individuals that are involved and there are
16 different things that must be shown with regard to the fifth
17 element.

18 With regard to Jack Leo, the Government has to
19 prove he in fact was assaulted. And, ladies and gentlemen,
20 has the evidence not done just that? What do you call it
21 when a fugitive who is determined to escape again charges at
22 you and runs into you? What do you call that? What do you
23 call it when that fugitive, after charging and running into
24 you, starts to grab your gun? What do you call it when
25 that charging fugitive digs his nails into your skin because

1 he is trying to take the gun from you? What do you call
2 it when that fugitive flails his arms at you? What do you
3 call it when that fugitive twists and turns around you while
4 digging his nails into your skin? Ladies and gentlemen,
5 if you call it assault, then that is precisely what the
6 evidence has shown.

7 And, ladies and gentlemen, again, bodily injury
8 is any injury, cut, abrasion or pain, no matter how
9 temporary. And the evidence has indeed shown with regard
10 to Deputy Leo that the defendant did assault him and cause
11 injury.

12 And, ladies and gentlemen, when we're talking
13 about intentionally, how does someone accidentally run down
14 the hall and charge a person? How does that happen? How
15 does a person accidentally dig their nails into someone's
16 skin? How does a person accidentally try to pull a gun away?
17 Common sense.

18 With regard to counts two and three, it's
19 slightly different, ladies and gentlemen. Those are the
20 counts that talk about the dangerous weapon. And in
21 those the Government must show that the defendant forcibly
22 assaulted or resisted or --

23 MR. PERUTO: I'm sorry.

24 THE COURT: Side bar?

25 MR. PERUTO: Yes.

1 (Conference at side bar out of presence of
2 jury.)

3 MR. PERUTO: With all due respect judge, this is
4 rebuttal. A summation is not rebuttal.

5 MS. BYRD: Yes, Your Honor. I'm responding
6 directly to what Mr. Peruto said about we have to show, in
7 order to establish the assault, what the elements were. We
8 showed the elements. I'm showing there were different
9 crimes -- well, different versions of the crime. I don't
10 know how else to do it. I think it's directly responsive
11 to Mr. Peruto's lengthy statements about the assault. "Was
12 there any evidence of an assault?" I think he said that
13 several times. He made mention about no one saw anybody
14 hitting or other things. I mean I think it's directly
15 responsive.

16 THE COURT: Well, I would agree with you to
17 this extent. It called into question whether there was an
18 assault. However, I'm pretty sure you are being repetitive
19 at this point. I wish you would focus and let's be done
20 because I think the jury understands both sides' positions.

21 MS. BYRD: Got it.

22 (Conference at side bar ends. Proceedings
23 continue in open court.)

24 MS. BYRD: And as I was saying, ladies and
25 gentlemen, with regard to counts two and three, Deputy David

1 and Denney, it's assaulted or obstructed or resisted. And
2 the evidence has shown that the defendant did just that.

3 Mr. Peruto asked how was it, what evidence was
4 there of how the safety on Deputy Leo's gun could ever have
5 been disengaged? Ladies and gentlemen, you heard Deputy
6 Leo tell you, you heard him show with Mr. Peruto how he was
7 holding, how he was holding the gun, how he was trained to
8 hold the rifle and how the defendant was right up against
9 him as he demonstrated and how the gun was running back and
10 forth between them. There was a lot of pulling of the gun
11 and he testified the safety is easy to disengage certainly
12 under those circumstances.

13 Ladies and gentlemen, I do agree with Mr. Peruto
14 on the following points. And that it is in fact the
15 Government's burden to prove the elements of the crimes
16 beyond a reasonable doubt. And, ladies and gentlemen, you
17 took an oath. You took an oath to hold the Government to
18 its burden of proof beyond a reasonable doubt. Because that
19 is how it is in this country and that is the way it should
20 be.

21 But, ladies and gentlemen, your oath did not
22 require you to leave your common sense at the door. And
23 your common sense, when used to evaluate the evidence in
24 this case, I submit, shows that the defendant is indeed
25 guilty of the crimes with which he is charged and should

1 therefore be found guilty. Thank you very much for your
2 time.

3 THE COURT: All right. Give me one moment so I
4 can have the easel moved. Thanks. That way, I can see you
5 all of you.

6 (Pause.)

7 THE COURT: Now, if anybody needs a break right
8 now, we could take a break. I'm reluctant to let you go in
9 that room with that food, though. I'm afraid I won't get
10 you back out again. So if you can hang in here for 10 to
11 15 minutes, I need to read you these jury instructions. I
12 want to assure you that you going to have a copy of these
13 in the jury room with you so you don't have to take notes
14 unless you really want to. And, of course, you are free to
15 do so if you like. And I acknowledge that reading is not
16 an interesting thing to listen to but I need to give these
17 to you carefully so I'm going to read them.

18 Members of the jury, now it is time for me to
19 instruct you about the law that you must follow in deciding
20 this case.

21 I will start by explaining your duties and the
22 general rules that apply in every criminal case. Then I will
23 explain the elements, or parts, of the crimes that the
24 defendants are accused of committing.

25 Then I will explain some rules that you must use

1 in evaluating particular testimony and evidence.

2 And last, I will explain the rules that you must
3 follow during your deliberations in the jury room, and
4 possible verdicts you may return.

5 Please listen very carefully to everything I
6 say.

7 You have two main duties as jurors. The first
8 one is deciding what the facts are from the evidence that
9 you saw and heard here in court. Deciding what the facts
10 are is your job, not mine, and nothing that I have said or
11 done during this trial was meant to influence your decision
12 about the facts in any way.

13 Your second duty is to take the law that I give
14 you, apply it to the facts, and decide if the Government has
15 proved of the defendant guilty beyond a reasonable doubt.
16 It is my job to instruct you about the law, and you are
17 bound by the oath that you took at the beginning of the
18 trial to follow the instructions that I give you, even if
19 you personally disagree with them. This includes the
20 instructions that I gave before and during the trial, and
21 these instructions. All the instructions are important, and
22 you should consider them together as a whole.

23 The lawyers may have talked about the law during
24 their arguments. But if what they said is different from
25 what I say, you must follow what I say. What I say about

1 the law controls.

2 Perform these duties fairly. Do not let any
3 bias, sympathy or prejudice that you may feel toward one
4 side or the other influence your decision in any way.

5 As you know, the defendant has pleaded not
6 guilty to the crimes charged against him in the Indictment.
7 The Indictment is not any evidence at all of guilt. It is
8 just the formal way that the Government tells the defendant
9 what crime he is accused of committing. It does not even
10 raise any suspicion of guilt.

11 Instead, a defendant starts the trial with a
12 clean slate, with no evidence at all against him, and the
13 law presumes that he is innocent. This presumption of
14 innocence stays with him unless the Government presents
15 evidence here in court that overcomes the presumption and
16 convinces you beyond a reasonable doubt that he is guilty.

17 This means that a defendant has no obligation to
18 present any evidence at all, or to prove to you in any way
19 that he is innocent. It is up to the Government to prove
20 that he is guilty, and this burden stays on the government
21 from start to finish. You must find the defendant not
22 guilty unless the Government convinces you beyond a
23 reasonable doubt that he is guilty.

24 The Government must prove every element of the
25 crime beyond a reasonable doubt. Proof beyond a reasonable

1 doubt does not mean proof beyond all possible doubt.
2 Possible doubts or doubts based purely on speculation are
3 not reasonable doubts. A reasonable doubt is a doubt based
4 on reason and common sense. It may arise from the evidence,
5 the lack of evidence, or the nature of the evidence.

6 Proof beyond a reasonable doubt means proof
7 which is so convincing that you would not hesitate to rely
8 and act on it in making the most important decisions in your
9 own lives. If you are convinced that the Government has
10 proved a defendant guilty beyond a reasonable doubt, say so
11 by returning a guilty verdict. If you are not convinced,
12 say so by returning a not guilty verdict.

13 You must make your decision based only on the
14 evidence that you saw and heard here in court. Do not let
15 rumors, suspicions, or anything else that you may have seen
16 or heard outside of court influence your decision in any
17 way.

18 The evidence in this case includes only what the
19 witnesses said while they were testifying under oath, the
20 exhibits that I allowed into evidence, and stipulations that
21 the lawyers agreed to.

22 Nothing else is evidence. The lawyers'
23 statements and arguments are not evidence. Their questions
24 and objections are not evidence. My legal rulings are not
25 evidence. And my comments and statements and questions are

1 not evidence.

2 In addition, the Indictment is not evidence. As
3 I said, it is merely a formal manner of accusing a person of
4 a crime in order to bring him to trial. You must not
5 consider the Indictment as any evidence of the guilt of the
6 defendant, or draw any inference of guilt from it.

7 During the trial I may not have let you hear
8 answers to some of the questions that the lawyers asked. I
9 also may have ruled that you couldn't see some exhibits that
10 the lawyers wanted you to see. As I think about that, I
11 don't think it happened, but if it did, I want you to
12 understand that you should disregard or ignore such things
13 completely. Don't even think about them. Don't speculate
14 about what a witness might have said or what an exhibit
15 might have shown. If it's not in evidence, you are bound by
16 your oath not to let that influence your decision in any
17 way.

18 Make your decision based only on the evidence,
19 as I have defined it here, and nothing else.

20 You should use your common sense in weighing the
21 evidence. Consider it in light of your everyday experience
22 with people and events, and give it whatever weight you
23 believe it deserves. If your experience tells you that
24 certain evidence reasonably leads to a conclusion, you are
25 free to reach that conclusion.

1 Now, some of you may have heard terms "direct
2 evidence" and "circumstantial evidence."

3 Direct evidence is simply evidence like the
4 testimony of an eyewitness which, if you believe it,
5 directly proves a fact. If a witness testified that he saw
6 it raining outside, and you believed him, that would be
7 direct evidence that it was raining.

8 Circumstantial evidence is simply a chain of
9 circumstances that indirectly proves a fact. If someone
10 walked into the courtroom wearing a raincoat covered with
11 drops of water and carrying a wet umbrella, that would be
12 circumstantial evidence from which you could infer that it
13 was raining.

14 It is your job to decide how much weight to give
15 the direct and circumstantial evidence. The law makes no
16 distinction between the weight that you should give to
17 either one, nor does it say that one is any better evidence
18 than the other. You should consider all of the evidence,
19 both direct and circumstantial, and give it whatever weight
20 you believe it deserves.

21 You have seen the witnesses and have heard them
22 testify. It is your duty to reconcile all the testimony of
23 all the witnesses, both on direct and cross-examination,
24 with all of the facts, if you are able to do so. If, after
25 weighing the matter carefully, and viewing it in light of

1 your best judgment as reasonable men and women, you find you
2 are unable to reconcile a conflict in the testimony, then it
3 is for you to say who has been mistaken, who has told the
4 truth, who has testified falsely, and whom you will believe.
5 In other words, it is for you to determine whether the
6 Government has proved beyond a reasonable doubt whether the
7 defendant committed the offenses charged in the Indictment,
8 and in making that determination, it is for you to decide
9 which testimony is most worthy of belief, and you may
10 disregard any testimony which cannot be reasonably and
11 fairly reconciled with the testimony you do believe.

12 That concludes the part of my instructions
13 explaining your duties and the general rules that apply in
14 every criminal case. In a moment, I am going to explain the
15 elements of the crimes that the defendant is accused of
16 committing.

17 But before do I that, I want to emphasize that
18 the defendant is only on trial for the particular crimes
19 charged in the Indictment. Your job is limited to deciding
20 whether the Government has proved the particular crimes
21 charged.

22 The defendant has been charged in four counts.
23 The number of charges is no evidence of guilt and this
24 should not influence your decision in any way. It is your
25 duty to separately consider the evidence that relates to

1 each charge and to return a separate verdict for each one.
2 For each charge, you must decide whether the Government has
3 presented proof beyond a reasonable doubt that the defendant
4 is guilty of that particular charge.

5 Your decision on one charge, whether it is
6 guilty or not guilty, should not influence your decision on
7 any of the other charges.

8 Next, I want to say a word about the date
9 mentioned in the Indictment. The Indictment charges that
10 the crime happened "on or about" April 9, 2005. The
11 Government does not have to prove that the crime happened on
12 that exact date. But the Government must prove that the
13 crime happened reasonably close to that date.

14 Count I of the Indictment charges that on or
15 about April 9, 2005, in the District of Delaware, the
16 defendant, Nelson Lora-Pena, forcibly assaulted Deputy
17 United States Marshal Jack Leo, while Deputy Leo was engaged
18 in the performance of official duties with the United States
19 Marshals Service, and inflicted bodily injury to Deputy Leo.

20 For you to find the defendant guilty of this
21 crime, you must find that the Government has proved each of
22 the following five elements beyond a reasonable doubt:

23 First: That on or about April 9, 2005, Jack Leo
24 was a federal officer as I will define that term for you;

25 Second: That at that time, the defendant

1 forcibly assaulted Jack Leo;

2 Third: That at the time of the assault, Jack
3 Leo was engaged in the performance of his official duties;

4 Fourth: That the defendant acted intentionally;
5 and

6 Fifth: That the defendant inflicted bodily
7 injury to Jack Leo.

8 Counts II and III of the Indictment charge that
9 on or about April 9, 2005, in the District of Delaware, the
10 defendant, Nelson Lora-Pena, used a dangerous weapon to
11 forcibly assault, resist, or interfere with Deputy United
12 States Marshal Robert Denney in Count II, and Deputy United
13 States Marshal William David in Count III, while those
14 deputies were engaged in the performance of official duties
15 with the United States Marshals Service.

16 For you to find the defendant guilty of these
17 crimes, you must find the Government has proved each of the
18 following five elements beyond a reasonable doubt:

19 First: That on or about April 9, 2005, Robert
20 Denney and William David were federal officers as I will
21 define that term for you;

22 Second: That at the time, the defendant
23 forcibly assaulted, resisted or interfered with Robert
24 Denney or William David;

25 Third: That at the time of the assault, Robert

1 Denney and William David were engaged in the performance of
2 their official duties.

3 Fourth: That the defendant acted intentionally;
4 and

5 Fifth: That the defendant used a dangerous
6 weapon to commit such acts.

7 Count IV of the Indictment charges that on or
8 about April 9th, 2005, in the District of Delaware, the
9 defendant Nelson Lora-Pena forcibly assaulted, resisted, or
10 interfered with United States Marshal David Thomas, while
11 Marshal Thomas was engaged in the performance of official
12 duties with the United States Marshals Service.

13 For to you to find the defendant guilty of this
14 crime, you must find the Government has proved each of the
15 following four elements beyond a reasonable doubt:

16 First: That on or about April 9, 2005, David
17 Thomas was a federal officer as I will define that term for
18 you;

19 Second: That at the time, the defendant
20 forcibly assaulted, resisted, or interfered with David
21 Thomas;

22 Third: That at the time of the crime, David
23 Thomas was engaged in the performance of his official
24 duties; and

25 Fourth: That the defendant act intentionally.

1 Now, the first element that the Government
2 must prove beyond a reasonable doubt is that on or about
3 April 9th, 2005, the person named as the victim of the crime
4 was a federal officer. I instruct you that a federal
5 officer includes a United States Marshal or Deputy United
6 States Marshal. However, it is up to you to determine
7 whether the person named as the victim held that title at
8 the time in question.

9 The Government does not have to prove that the
10 defendant knew that the person named as the victim was a
11 federal officer. The crime of assault on a federal officer
12 is designed to protect federal officers acting in pursuit of
13 their official functions, and therefore, it is sufficient to
14 satisfy this element for the Government to prove that the
15 person named as a victim was a federal officer at the time
16 of the alleged assault. Whether the defendant knew that the
17 victim was a federal officer at the time is irrelevant to
18 such a determination, and should not be considered by you.

19 The second element that the Government must
20 prove beyond a reasonable doubt is that the defendant
21 forcibly assaulted, resisted, or interfered with the federal
22 officer. I will define these acts for you. These acts --
23 assault, resist, or interfere -- are modified by the word
24 "forcibly". Thus, before you can find the defendant guilty
25 you must find, beyond a reasonable doubt, that he acted

1 forcibly. "Forcibly" means by use of force. The use of
2 force may be actual or threatened. If the defendant
3 threatened the federal officer in a way that would inspire
4 fear of pain or bodily harm, then he would have acted
5 "forcibly".

6 To "assault" is to threaten to inflict injury
7 upon the person of another which, when coupled with an
8 apparent present ability, causes a reasonable apprehension
9 of immediate bodily harm. To "resist" means to obstruct or
10 to oppose. To "interfere" with means to obstruct or hinder.

11 The third element the Government must prove
12 beyond a reasonable doubt is that at the time of the alleged
13 assault, the federal officer was engaged in the performance
14 of his official duties. You may find that the federal
15 officer was engaged, if you find at the time of the alleged
16 assault, he was acting within the scope of what he was
17 employed to do. On the other hand, if you find that the
18 federal officer was involved in a personal venture of his
19 own, you must find that he was not engaged in the perform-
20 ance of his official duties, and you must acquit the
21 defendant of the crime charged.

22 The fourth element that the Government must
23 prove beyond a reasonable doubt is that the defendant
24 committed the acts charged intentionally. In other words,
25 you must be persuaded that the defendant acted voluntarily

1 and intentionally, and not by mistake or accident.

2 To inflict "bodily injury" means any injury,
3 including a cut, an abrasion, or a bruise; any physical
4 pain, or any other injury to the body, no matter how
5 temporary.

6 The last element that the Government must prove
7 beyond a reasonable doubt, as to Counts II and III, is that
8 the defendant used a dangerous weapon to assault, resist,
9 or interfere with a federal officer. The term "dangerous
10 weapon" means any thing capable of inflicting serious bodily
11 injury or causing the death of a person.

12 Both the physical capabilities of the thing
13 used and the manner in which it is used may be considered in
14 determining whether the thing is a dangerous weapon.

15 The law permits the jury to determine whether
16 the Government has proven the guilt of the defendant for any
17 other offense which is, by its very nature, necessarily
18 included in the crime that is charged in Counts I through
19 III of the Indictment.

20 Let me try to explain this more carefully.
21 We're talking here about lesser included offenses. So
22 let me repeat this for you. You're permitted to determine
23 whether the Government has proven the guilt of the defendant
24 for any offense which, by its nature, is included in the
25 crimes charged in Counts I through III of the Indictment.

1 If the jury should unanimously find that the
2 Government has proven each of the essential elements of
3 the offense that is charged in Counts I through III of the
4 Indictment beyond a reasonable doubt, the foreperson should
5 write "guilty" in the space provided and your consideration
6 of that count is concluded.

7 Now at this point, and the parties have seen
8 this, I'm going to hold up for you this special verdict form
9 that you are going to have in the jury room with you. So
10 what I'm telling you is, as to each count, there is going to
11 be a question. And it will say, as to Count I, for example,
12 charging the defendant Nelson Lora-Pena with assault on Jack
13 Leo, we, the jury, find the defendant ... and there is a
14 space for you to mark for guilty or for not guilty as you
15 find.

16 There is also, however, as to the first three
17 counts, not the fourth count, but as to the first three
18 counts, the one says, to which there is a fifth element to
19 be proved, another question for this lesser included
20 offense. And it says: If the jury finds the defendant not
21 guilty as to Count I with respect -- excuse me. If the jury
22 finds the defendant not guilty as to Count I, with respect
23 to the lesser included offense, we find the defendant Nelson
24 Lora-Pena guilty or not guilty.

25 There are those two questions for each of the

1 first three counts, not for the fourth count which only has
2 four elements. Okay?

3 If the jury should find unanimously that the
4 Government has not proven each element of the offense that
5 is charged in Counts I through III of the Indictment beyond
6 a reasonable doubt, then the foreperson should write "not
7 guilty" in the space provided and the jury should then
8 consider the guilt or innocence of the defendant for the
9 other offense necessarily included in the offense charged in
10 Counts I through III of the Indictment.

11 The crimes charged in Counts I through III of
12 the Indictment in this case necessarily include another
13 offense which has the same elements of proof as Counts I
14 through III except for the fifth element, either, as in
15 Count I, that the defendant inflicted bodily injury or, as
16 in Counts II and III, used a dangerous weapon. Thus, if you
17 are convinced beyond a reasonable doubt that the Government
18 has proven the first four elements of the Counts I through
19 III of the Indictment, but not the fifth element, you should
20 return a verdict of guilty on the lesser included offense on
21 those charges.

22 The jury will bear in mind that the burden is
23 always upon the Government to prove, beyond a reasonable
24 doubt, each and every essential element of any other offense
25 which is necessarily included in the crimes charged in

1 Counts I through III of the Indictment. The law never
2 imposes upon a defendant in a criminal case the burden or
3 duty of calling any witnesses or producing any evidence.

4 Now, that concludes the part of my instructions
5 explaining the elements of the crime charged. Next I'm
6 going to explain some rules that you must use in considering
7 the testimony and evidence.

8 The defendant's testimony should be considered
9 by you just as any other witnesses in the case and in
10 evaluating his credibility, you should use the same
11 guidelines which you apply to the testimony of other
12 witnesses. In no event should you give either greater or
13 lesser credence to the testimony of the defendant merely
14 because he is the accused.

15 Now, let me finish up by explaining some things
16 about your deliberations in the jury room and your possible
17 verdicts.

18 Once you start deliberating, do not talk to the
19 jury officer, or to me, or to anyone else except each other
20 about the case. If you have any questions or messages, you
21 must write them down on a piece of paper, sign them and then
22 give them to the jury officer.

23 Now, the jury officer is going to be one these
24 nice gentlemen with the blue blazer and gray slacks that
25 you have seen coming in and out of the court, been here in

1 the courtroom with us. We're going to swear one of them
2 to be your jury officer and protect the secrecy of your
3 deliberations. By custom of this court, your foreperson
4 is Juror No. 1, the lady seated on the front row, furthest
5 to your right. So what you do, if you have a question, is
6 you would write it down and your foreperson would sign that
7 note, date it, and then hand it to the jury officer who will
8 be sitting right outside the door who would bring it to me.
9 Okay? I'll respond as soon as I can. I may have to talk to
10 the lawyers about what you have asked, so it may take some
11 time to get back to you. Any questions or messages, as I'd
12 said, should be sent through your foreperson.

13 One more thing about messages. Don't ever
14 write down or tell anyone how you stand on your votes. For
15 example, don't write down or tell anyone that you are split
16 6-6, or 8-4, or whatever your vote happens to be. That
17 should stay secret until you are finished.

18 Your verdict, whether it is guilty or not
19 guilty, must be unanimous. So ultimately, it would require
20 for a verdict of guilty or not guilty, all 12 votes.

21 To find a defendant guilty, every one of you
22 must agree that the Government has overcome the presumption
23 of innocence with evidence that proves his guilt beyond a
24 reasonable doubt.

25 To find him not guilty, every one of you must

1 agree that the Government has failed to convince you beyond
2 a reasonable doubt.

3 Either way, guilty or not guilty, your verdict
4 must be unanimous.

5 After you have reached unanimous agreement as to
6 guilt or innocence of the defendant with respect to each of
7 the counts in the Indictment, you then return to the
8 courtroom. Your foreperson, who by custom of this Court, as
9 I noted, is Juror No. 1, will then hand this verdict form to
10 the Courtroom Deputy, who is here in the courtroom with us,
11 and then your verdict of not guilty or guilty with respect
12 to each charge will be published or stated in open court.

13 Now that all of the evidence is in and the
14 arguments are completed, you are free to talk about the case
15 in the jury room. In fact, it is your duty now to talk
16 about the case in the jury room and to make every effort you
17 can to speak with each other about the evidence and reach
18 unanimous agreement. Talk with each other, listen carefully
19 and respectfully to each other's views and keep an open mind
20 as you listen to what your fellow jurors have to say. Try
21 your best to work out your differences. Don't hesitate to
22 change your mind if you are convinced that other jurors are
23 right and your original position was wrong.

24 But do not ever change your mind just because
25 other jurors see things differently, or just to get the case

1 over. In the end, your vote must be exactly that -- your
2 own vote. It is important for you to reach unanimous
3 agreement, but only if you can do so honestly and in good
4 conscience.

5 No one will be allowed to hear your discussions
6 in the jury room and no record will be made of what you say.
7 So you should all feel free to speak your minds.

8 Listen carefully to what the other jurors have
9 to say and then decide for yourself if the Government has
10 proved the defendant guilty beyond a reasonable doubt.

11 If you decide that the Government has proved the
12 defendant guilty, then it will be my job to decide what the
13 appropriate punishment should be.

14 Deciding what punishment should be is my job,
15 not yours. It would violate your oaths as jurors to even
16 consider the possible punishment in deciding the verdict.
17 Your job is to look at the evidence and decide if the
18 Government has proved the defendant guilty beyond a
19 reasonable doubt.

20 As I noted, I prepared this verdict form that
21 you should use to record your verdict. The form will be
22 given to the foreperson.

23 If you decide that the Government has proved
24 the charge beyond a reasonable doubt, say so having your
25 foreperson mark the appropriate place on the form. If you

1 decide the Government has not proved it, again, you say so
2 by having the appropriate portion of the form marked. At
3 that stage, you have your jury foreperson sign the form and
4 date it and return it to me.

5 Let me finish up by repeating something that I
6 said to you earlier. Nothing that I have said or done
7 during this trial was meant to influence your decision in
8 any way. You decide for yourselves if the Government has
9 proved the defendant guilty of the charges beyond a
10 reasonable doubt.

11 Okay. You need to indulge me for about 60
12 seconds while I talk to the lawyers at side bar.

13 (Conference held at side bar out of presence of
14 jury.)

15 THE COURT: Is there any objection to the jury
16 instructions as delivered?

17 MR. PERUTO: One.

18 THE COURT: Okay.

19 MR. PERUTO: Judge -- and this an oversight on
20 my part previously. In defining "deadly weapon," it's
21 inherent in its definition. In other words, "serious bodily
22 injury" and not "bodily injury." The words "serious bodily
23 injury" have not been defined for the jury and that's
24 different than "bodily injury" and I'm asking for a
25 definition of "serious bodily injury."

1 THE COURT: Okay.

2 MS. BYRD: I think we're going to have to add,
3 Your Honor, and prepare one. One hasn't been submitted.

4 MR. PERUTO: Just a standard one.

5 THE COURT: Well --

6 MS. BYRD: The term "bodily injury" is modified
7 by "serious."

8 THE COURT: Yes, I'm going to preserve for the
9 record. I believe that "serious bodily injury" is one that
10 the jury -- the word "serious" that modified "bodily injury"
11 is one that the jury ought to be able to understand on its
12 own.

13 I will do this. I'm going to swear the jury
14 officer and submit the case long enough for these folks,
15 who have now been here for more than three hours, to go
16 into the room. I'm not going to tell them that they can't
17 start deliberating. I'm going to tell them there is one
18 additional instruction that the lawyers and I will discuss,
19 and that we may call them back briefly for that purpose.
20 That will give us a chance to do that without slowing them
21 down; all right?

22 MR. PERUTO: Yes.

23 MS. BYRD: Yes.

24 MR. PERUTO: Thank you.

25 (Conference at side bar ends. Proceedings

1 continue in open court.)

2 THE COURT: Okay. Here is how we're going to
3 proceed. We're going to swear the jury officer, send you
4 back, the case will be yours to deliberate. There is
5 one point in the instructions that may require slight
6 additional elaboration. If it does, we'll call you back in,
7 I'll give you that additional instruction and I'll send you
8 back to continue your deliberations but we won't hold you up
9 from beginning your deliberations. Those will start now.

10 Let's go ahead and swear the jury officer.

11 (Jury officer placed under oath at 2:06 p.m.)

12 THE COURT: All right. Ladies and gentlemen, at
13 this juncture the case is yours. And our alternate jurors,
14 you know, sometimes people, having sat through a trial, they
15 wanted to deliberate and may be frustrated at being excused.
16 However you feel about it, I express on behalf of all
17 parties this sincere gratitude for your service.

18 You are now excused. If you have anything in
19 the jury room, you should collect it and members of the jury
20 should not begin to deliberate until these colleagues that
21 have been with you have had a chance to do that and depart.
22 Okay?

23 Let's have the jury out.

24 (Jury left courtroom.)

25 THE COURT: All right. Please be seated.

1 Here is what I'm going to do. I've got a copy
2 of Devitt and Blackmar or whatever the correct name of the
3 federal jury instructions treatise is. And I will go and I
4 will go and see if there is something on "serious bodily
5 injury." I don't know if you want to wait to see what I'm
6 able to bring out to you, because it might be just my
7 Xeroxing of that. The two of you can look at it and say
8 fine or not. If you think you need more time after that
9 because you want to check something at your office or you
10 want to contact somebody back at your office, within bounds
11 of reason I'll give you time to do that. All right?

12 MS. BYRD: Yes, Your Honor.

13 THE COURT: Okay. So I'll ask you folks then
14 to hesitate here, give me five or ten minutes, and stay in
15 the courtroom. I'll ask the Marshal Service, if you would,
16 to keep the defendant in here while I do that so he can be
17 present while I discuss that issue with Mr. Peruto and
18 Ms. Byrd. Again, it shouldn't take me more than five or ten
19 minutes, okay?

20 U.S. DEPUTY MARSHAL LONG: Yes, Your Honor.

21 THE COURT: We're in recess.

22 (Brief recess taken.)

23 THE COURT: All right. Please be seated.

24 I've handed or had handed to each of you page
25 106 from the treatise that I referenced earlier, Section

1 25.09 to the note section, of which quotes 18 U.S.C.,
2 Section 113(b)(2) and I have incorporated the language about
3 serious bodily injury into the dangerous weapon jury
4 instruction so that it now would have the additional
5 sentence:

6 " 'Serious bodily injury' means bodily injury
7 which involves a substantial risk of death, extreme physical
8 pain or protracted loss or impairment of the function of a
9 bodily member, organ or mental faculty."

10 Are you content with that, Mr. Peruto?

11 MR. PERUTO: Yes.

12 THE COURT: Do you have any objection to that?

13 MS. BYRD: No, Your Honor.

14 THE COURT: Why don't we --

15 MR. PERUTO: Can I just -- excuse me. I would
16 object to the statute.

17 THE COURT: No, the statute is not going in.

18 MR. PERUTO: Okay.

19 THE COURT: That was for you to see what I was
20 working off of.

21 MR. PERUTO: No problem.

22 THE COURT: Here is what I intend to do. We'll
23 bring them back in, I'll tell them I'm going to read one of
24 the instructions over again that has an addition. It's not
25 to be taken out of context as having any more or less weight

1 than anything else, it's simply to note for them this
2 additional language. And they'll have the full jury
3 instructions which are to be considered in their entirety
4 when they go into the jury room. All right?

5 MS. BYRD: Yes, Your Honor.

6 THE COURT: Are you satisfied with that, Ms.
7 Byrd?

8 MS. BYRD: Yes, Your Honor.

9 THE COURT: Mr. Peruto?

10 MR. PERUTO: Yes.

11 THE COURT: All right. Let's bring them back
12 in. We'll make it quick.

13 You folks have seen the copy the special verdict
14 form, both sides; right?

15 MS. BYRD: Yes, Your Honor.

16 THE COURT: Mr. Peruto?

17 MR. PERUTO: I think so. (Nodding yes.)

18 THE COURT: The only difference in the form from
19 the way it was submitted to me is it has a signature for
20 jury foreperson; all right?

21 MS. BYRD: Yes, Your Honor.

22 THE COURT: I should also note while we're
23 waiting, I have made some typographical error corrections
24 to the jury instructions, some of which you noticed as I was
25 reading where it said "a" defendant and we only have one

1 defendant, it should "the" defendant, et cetera, et cetera.
2 I'll make those corrections before we send it back to the
3 jury; all right?

4 MS. BYRD: Yes, Your Honor.

5 THE COURT: Thanks.

6 (Jury returned.)

7 THE COURT: Thanks. Be seated.

8 Welcome back. I'm going to re-read for you one
9 of the instructions that now has some additional language.
10 You should not give this any greater or lesser weight than
11 any other instructions. Indeed, you should consider all of
12 the instructions together as a whole. I inserted additional
13 language. I'm going to read one instruction to you again
14 and then I'm going to send back to you the full set of the
15 jury instructions; okay?

16 This is with the respect to Counts II and III,
17 dangerous weapon.

18 The last element the Government must prove
19 beyond a reasonable doubt as to Counts II and III is that
20 the defendant used a dangerous weapon to assault, resist,
21 or interfere with a federal officer. The term "dangerous
22 weapon" means any thing capable of inflicting serious bodily
23 injury or causing the death of a person. "Serious bodily
24 injury" means bodily injury which involves a substantial
25 risk of death, extreme physical pain or protracted loss or

1 impairment of the function of a bodily member, organ or
2 mental faculty.

3 Both the physical capabilities of the thing used
4 and the manner in which it is used may be considered in
5 determining whether the thing is a dangerous weapon.

6 All right. Thanks.

7 (Jury left courtroom.)

8 THE COURT: Please be seated.

9 I'll make a request. I know that the hour is
10 late but I would ask counsel, if you would -- counsel, not
11 the defendant. If he needs to be taken down, that's fine.
12 But I would ask counsel if you wouldn't hesitate here for
13 maybe 10 minutes or so. Sometimes right after they go out,
14 a jury will have a quick question. And if we have to find
15 you and bring you back, what we could have handled very
16 rapidly ends up taking a lot of time. So if you don't mind
17 giving until, you know, just until 12:30; all right? And
18 then you are free to go get a bite to eat, whatever you need
19 to do.

20 I will need, however, a contact number where you
21 can be reached rapidly in case the jury has a question or in
22 the event we get a verdict so that you can be brought back
23 quickly. Okay? So please make sure you give that to one of
24 the clerks here before me and we'll want to have you close
25 enough to the courthouse that once that call is made it

1 would take no more than ten minutes for you to get here; all
2 right?

3 All right. Thanks. We're in recess.

4 (Off the record from 2:23 p.m. until 4:38 p.m.)

5 THE COURT: Please be seated.

6 As I'm sure you've been told by now, we received
7 a note from the jury indicating that they have a verdict, so
8 we'll bring the jury in and take the verdict.

9 (Jury returned.)

10 THE COURT: Thank you. Please be seated, ladies
11 and gentlemen.

12 I received a note from your foreperson
13 indicating that you have a verdict.

14 Madam Foreperson, is this your verdict?

15 THE FOREPERSON: Yes, Your Honor.

16 THE COURT: All right. And the verdict of the
17 jury?

18 THE FOREPERSON: Yes, Your Honor.

19 THE COURT: All right. I'll ask the courtroom
20 deputy to publish the verdict.

21 THE DEPUTY CLERK: As to count one, charging the
22 defendant, Nelson Lora-Pena, with assault Jack Leo, the jury
23 find the defendant guilty.

24 As to count two, charging the defendant, Nelson
25 Lora-Pena, with assault on Robert Denney, the jury finds the

1 defendant guilty.

2 As to count three, charging the defendant,
3 Nelson Lora-Pena, with assault on William David, the jury
4 finds the defendant guilty.

5 As to count four, charging the defendant, Nelson
6 Lora-Pena, with assault on David Thomas, the jury finds the
7 defendant guilty.

8 THE COURT: All right. Mr. Peruto, any
9 applications?

10 MR. PERUTO: I ask the jury be polled, Your
11 Honor.

12 THE COURT: All right. Ladies and gentlemen,
13 let me explain this to you. Polling of the jury simply
14 means I will ask each of you whether the verdict represents
15 your vote; okay? And I'll ask you individually by juror
16 number and I'll ask you as to each count. So it will take
17 a couple minutes to roll through it but the defense is
18 entitled to be assured that this verdict represents all of
19 your votes as to all of the counts. All right?

20 So Juror No. 1, is this your verdict?

21 JUROR NO. 1: Yes.

22 THE COURT: You have to stand.

23 Is this your verdict as to count one?

24 JUROR NO. 1: Yes, Your Honor.

25 THE COURT: As to count two?

1 JUROR NO. 1: Yes, Your Honor.

2 THE COURT: As to count three?

3 JUROR NO. 1: Yes, Your Honor.

4 THE COURT: As to count four?

5 JUROR NO. 1: Yes, Your Honor.

6 THE COURT: Thank you.

7 Juror No. 2, is this your verdict as to count

8 one?

9 JUROR NO. 2: Yes, Your Honor.

10 THE COURT: As to count two?

11 JUROR NO. 2: Yes.

12 THE COURT: As to count three?

13 JUROR NO. 2: Yes, Your Honor.

14 THE COURT: As to count four?

15 JUROR NO. 2: Yes, Your Honor.

16 THE COURT: Thank you, ma'am.

17 Juror No. 3, is this your verdict as to count

18 one?

19 JUROR NO. 3: Yes, Your Honor.

20 THE COURT: As to count two?

21 JUROR NO. 3: Yes, Your Honor.

22 THE COURT: As to count three?

23 JUROR NO. 3: Yes, Your Honor.

24 THE COURT: As to count four?

25 JUROR NO. 3: Yes, Your Honor.

1 THE COURT: Thank you, sir.

2 Juror No. 4, is this your verdict as to count
3 one?

4 JUROR NO. 4: Yes, Your Honor.

5 THE COURT: As to count two?

6 JUROR NO. 4: Yes, Your Honor.

7 THE COURT: As to count three?

8 JUROR NO. 4: Yes.

9 THE COURT: And as to count four?

10 JUROR NO. 4: Yes.

11 THE COURT: Thank you.

12 Juror No. 5, is this your verdict as to count
13 one.

14 JUROR NO. 5: Yes, Your Honor.

15 THE COURT: As to count two?

16 JUROR NO. 5: Yes, Your Honor.

17 THE COURT: As to count three?

18 JUROR NO. 5: Yes, Your Honor.

19 THE COURT: As to count four?

20 JUROR NO. 5: Yes, Your Honor.

21 THE COURT: Thank you.

22 Juror No. 6, is this your verdict as to count
23 one?

24 JUROR NO. 6: Yes, Your Honor.

25 THE COURT: As to count two?

1 JUROR NO. 6: Yes, Your Honor.

2 THE COURT: As to count three?

3 JUROR NO. 6: Yes, Your Honor.

4 THE COURT: As to count four?

5 JUROR NO. 6: Yes, Your Honor.

6 THE COURT: Thank you.

7 Juror No. 7, is this your verdict as to count
8 one.

9 JUROR NO. 7: Yes, Your Honor.

10 THE COURT: As to count two?

11 JUROR NO. 7: Yes, Your Honor.

12 THE COURT: As to count three?

13 JUROR NO. 7: Yes, Your Honor.

14 THE COURT: As to count four?

15 JUROR NO. 7: Yes, Your Honor.

16 THE COURT: Thank you, ma'am.

17 Juror No. 8, is this your verdict as to count
18 one.

19 JUROR NO. 8: Yes, sir.

20 THE COURT: As to count two?

21 JUROR NO. 8: Yes, sir.

22 THE COURT: As to count three?

23 JUROR NO. 8: Yes, Your Honor.

24 THE COURT: As to count four?

25 JUROR NO. 8: Yes, sir.

1 THE COURT: Thank you, ma'am.

2 Juror No. 9, is this your verdict as to count
3 one.

4 JUROR NO. 9: Yes, it is, Your Honor.

5 THE COURT: As to count two?

6 JUROR NO. 9: Yes, Your Honor.

7 THE COURT: As to count three?

8 JUROR NO. 9: Yes, Your Honor.

9 THE COURT: As to count four?

10 JUROR NO. 9: Yes.

11 THE COURT: Thank you.

12 Juror No. 10, is this your verdict as count one?

13 JUROR NO. 10: Yes, Your Honor.

14 THE COURT: As to count two?

15 JUROR NO. 10: Yes, Your Honor.

16 THE COURT: As to count three?

17 JUROR NO. 10: Yes.

18 THE COURT: As to count four?

19 JUROR NO. 10: Yes.

20 THE COURT: Thank you, ma'am.

21 Juror No. 11, is this your verdict as to count
22 one?

23 JUROR NO. 11: Yes, Your Honor.

24 THE COURT: As to count two?

25 JUROR NO. 11: Yes, Your Honor.

1 THE COURT: As to count three?

2 JUROR NO. 11: Yes, Your Honor.

3 THE COURT: As to count four?

4 JUROR NO. 11: Yes, Your Honor.

5 THE COURT: Thank you, sir.

6 Juror No. 12, is this your verdict as to count
7 one?

8 JUROR NO. 12: Yes, Your Honor.

9 THE COURT: As to count two?

10 JUROR NO. 12: Yes, Your Honor.

11 THE COURT: As to count three?

12 JUROR NO. 12: Yes, Your Honor.

13 THE COURT: As to count four?

14 JUROR NO. 12: Yes, Your Honor.

15 THE COURT: Thank you.

16 Ladies and gentlemen of the jury, it's not an
17 easy thing to sit in judgment. Thank you very much for your
18 service in this matter. You are now free to go. And if you
19 have a moment or two, you can hesitate, I'd be pleased to
20 have a chance to thank you in person, but you sure don't
21 have to wait for me if you don't want to. You are all
22 excused with the gratitude of the Government and all
23 involved in these proceedings.

24 Okay. Let's have them out.

25 (Jury left courtroom.)

1 THE COURT: All right. Please be seated.

2 Mr. Peruto, Ms. Byrd, are there any other
3 matters that need to come before the court at this time?

4 MR. PERUTO: No, Your Honor.

5 MS. BYRD: No, Your Honor.

6 THE COURT: All right. I thank counsel for all
7 parties involved for an efficiently tried case. We'll set a
8 sentencing date at some point in the future and communicate
9 it to the parties.

10 MS. BYRD: Yes, Your Honor.

11 THE COURT: We stand in recess.

12 (Jury trial concludes at 4:48 p.m.)

13

14 INDEX

15

NELSON LORA-PENA

16

CROSS-EXAMINATION BY MR. PERUTO	3
DIRECT EXAMINATION BY MR. PERUTO	25
CROSS-EXAMINATION BY MS. BYRD	36

18

CLOSING ARGUMENT BY MS. BYRD	55
------------------------------	----

CLOSING ARGUMENT BY MR. PERUTO	89
--------------------------------	----

REBUTTAL ARGUMENT BY MS. BYRD	102
-------------------------------	-----

INSTRUCTIONS TO THE JURY	111
--------------------------	-----

JURY VERDICT	138
--------------	-----

24

25